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Counsel for Law Debenture Trust Company of New York,
As successor Indenture Trustee and Property Trustee
for the 8.25% Junior Subordinated Note Due 2033
and the Adjustable Rate Junior Subordinated Note Due 2033

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

)	
In re:)	Chapter 11
)	
)	Case No. 05-44481 (RDD)
DELPHI CORPORATION, <u>et al.</u> ,)	(Jointly Administered)
)	
)	
Debtors.)	
)	

**MOTION OF LAW DEBENTURE TRUST COMPANY OF NEW YORK
FOR LEAVE TO APPEAL
PURSUANT TO 28 U.S.C. §§ 158(a)(3) AND 1292(b)
AND THE COLLATERAL ORDER DOCTRINE**

Law Debenture Trust Company of New York (“Law Debenture”), by and through
its undersigned counsel, hereby submits this Motion, pursuant to 28 U.S.C. §§ 158(a)(3)

and 1292(b), for Leave to Appeal an interlocutory order by the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”) entered on February 8, 2006.

1. On October 8, 2005 (the “Petition Date”), Delphi Corporation (“Delphi”) and certain of its affiliates and subsidiaries (collectively, “Debtors”) each filed with the Bankruptcy Court voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”), commencing the within cases (the “Cases”). At that time, Debtors had more than 180,000 employees worldwide, global annual revenues of approximately \$28.6 billion, and global assets worth approximately \$17.1 billion.

2. The Cases represent the largest manufacturing and technology filing in the history of the federal bankruptcy system and ranked on the Petition Date as (1) the fifth largest public company business reorganization in terms of revenues and (2) the thirteenth largest public company reorganization in terms of assets. According to the Debtors, the Cases will involve substantial restructuring, including divestiture, consolidation and wind-down of a substantial segment of the Debtors’ U.S. business operations.

3. Law Debenture is the successor Indenture Trustee and Property Trustee for the holders of the (a) 8.25% Junior Subordinated Note Due 2033 and (b) adjustable Rate Junior Subordinated Note Due 2033 (together, the “Subordinated Notes”) issued pre-petition by Delphi. The Subordinated Notes have an aggregate principal amount of \$412,371,975. The Subordinated Notes are either contractually or structurally subordinate to all other unsecured debt.¹ The Subordinated Noteholders² thus have the

¹ Law Debenture does not waive any right it may have or any right of any holder of the Subordinated Notes to challenge the subordination provisions of the Indenture. However, as the

singular distinction of being in the most tenuous position in the capital structure – junior in all respects to all other creditor classes and senior only to equity.

4. Notwithstanding this unique position, the Subordinated Noteholders are not represented on the Official Committee of Unsecured Creditors (the “Committee”). The Committee consists only of representatives of general unsecured debt other than the Subordinated Noteholders, all of whom are senior in right of payment to the those of the Subordinated Noteholders. Efforts of Law Debenture to be appointed to the Committee were rejected by the United State Trustee and opposed by the Debtors and the Committee.

5. Consequently, Law Debenture sought relief from the Bankruptcy Court by means of a motion seeking inclusion on the Committee (the “First Motion”). On February 8, 2006, following an Omnibus Hearing (the “Hearing”) held on January 6, 2006, at which it considered a variety of motions and issues, including the First Motion, the Bankruptcy Court entered an interlocutory order denying Law Debenture’s request. It denied Law Debenture’s First Motion because it found that the U.S. Trustee did not abuse her discretion in its formulation of the Committee.

6. Law Debenture respectfully submits that the Bankruptcy Court applied an erroneous legal standard – abuse of discretion – for review of the U.S. Trustee’s actions and, in connection therewith, made erroneous findings. Law Debenture requests, for the reasons stated in this Motion and the supporting Memorandum of Law submitted herewith, that it be permitted to appeal the Bankruptcy Court’s interlocutory order

Bankruptcy Court noted, until challenged, it is fair to assume the effectiveness of the subordination provisions.

² For convenience, the term “Subordinated Noteholders” is used herein to refer to the ultimate beneficiaries of the Subordinated Notes, notwithstanding the technical fact that Law Debenture, as Property Trustee, is currently the sole holder of the Subordinated Notes.

denying its First Motion.

WHEREFORE, Law Debenture respectfully requests that this Court enter an Order: (i) granting this Motion for Leave to Appeal the Interlocutory Order entered by the United States Bankruptcy Court for the Southern District of New York on February 8, 2006 and (ii) granting such other relief as is just and proper.

Dated: February 17, 2006

Respectfully submitted,

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